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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

ROBERTO CHAIDEZ,

Plaintiff and Appellant,

v.

CITY OF LA MESA et al.,

Defendants and Respondents.

D054222

(Super. Ct. No. GIC878633)

APPEAL from a judgment of the Superior Court of San Diego County, Charles R. Hayes, Judge. Affirmed.

Roberto Chaidez appeals a judgment of dismissal after the trial court sustained without leave to amend the demurrer of the City of La Mesa (the City) and certain officers of the La Mesa Police Department (LMPD)¹ on his complaint alleging that when he was arrested in 2004, cash was taken from him and not reported on a property inventory form. The court determined the complaint does not state a cause of action because Chaidez failed to comply with the claim presentation requirement of the

¹ The complaint named the following officers: Ted Fenn, Daniel Willis, Bret Richards, Mark Becker and Miseal Cerda.

Government Claims Act (Gov. Code², § 810 et seq.) and LMPD employees are statutorily immune from liability. We affirm the judgment on the first issue, which renders the second issue moot.

FACTUAL AND PROCEDURAL BACKGROUND

On April 2, 2004, the LMPD arrested Chaidez.³ On May 3, he submitted a written inmate grievance to the San Diego County Sheriff's Department (Sheriff's Department), claiming the "jail is stealing my money." The grievance stated that when he was arrested the police department "removed a moneyclip with over 2-3 thousand dollars = (rent and deposit) = money sealed into a plastic property bag with 2 wallets — one also full of foreign currency several thousand pound, bills (Euros) plus I.D. wallet."⁴

² All undesignated statutory references are to the Government Code.

³ Under Evidence Code section 452, subdivision (d), we grant defendants' request that we take judicial notice of this court's opinion in an appeal in an action Chaidez brought against the State of California, the San Diego County District Attorney, the trial deputy, a San Diego County Superior Court judge and other parties for violation of his due process rights, fraud and conspiracy, arising from his underlying criminal case. (*Chaidez v. State of California* (March 10, 2009, D052032) [nonpub. opn.].) We deny defendants' request insofar as it pertains to a copy of Chaidez's arrest report, as they cite no supporting legal authority for its inclusion in the record.

Our previous opinion shows that in February 2006 a jury found Chaidez guilty of crimes committed in April 2004, including residential burglary of two inhabited dwelling homes, receiving stolen property, and unlawfully taking and driving a vehicle. Further, the jury found true special allegations he had suffered two prior serious felony convictions, as well as other allegations of strike priors and prior prison terms. The jury verdicts also included true findings on separate allegations of previous convictions of a 1982 prison stabbing conviction and receiving stolen property. The court sentenced Chaidez to a term of 60 years to life with added terms for enhancements.

⁴ We cite Chaidez's various writings verbatim.

The grievance also stated he had "requested the full amount of currency list of my property," but the "Vista jail has denied access to knowledge of any = (currency) = they stealing my money or where is it."

The grievance was forwarded to the Sheriff Department's "property supervisor," who wrote on the form that Chaidez was "given copy of property receipt." The Sheriff Department's "Booking Intake/Personal Property Inventory" form stated Chaidez had a total of \$34 in cash, which was put in a sealed bag and delivered to the jail, a wallet and other personal property, and "misc. foreign currency."

On August 4, 2004, Chaidez submitted another written grievance to the Sheriff's Department, which stated "officers 'stole' my money out of a sealed property bag," and had denied "every request for a full account of exact amount of currency jail holdin in that signed sealed arrest bag. . . . I want my money or tell me who is holding it I need it for court." (Underscoring omitted.) The response on the form by detention facility staff states Chaidez's property bag was examined and there was no United States currency in it, but there was "foreign currency of some loose change."

On August 6, 2004, Chaidez presented a claim to the County of San Diego (the County), which alleged cash was taken from him between April and August 1, and the jail refused to allow him to view his property bag. The County deemed the claim insufficient. On August 6 or 16, Chaidez filed a complaint with the Sheriff's Department complaining that his "money clip and money vanished or stolen," and the Sherriff's Department "claims money vanish from the sealed baggie." On September 2, Chaidez

submitted another claim to the Sheriff's Department, which stated, "this claim is entirely about my money," which was "missing" or "misplaced or stolen."

In June 2005 Chaidez filed another complaint with the County pertaining to his money. On June 20, the County advised him it was denying his claims. The letter states: "Please also note the County has no control or jurisdiction over the [LMPD]."

Also in June 2005, Chaidez filed a complaint with the Internal Affairs Unit of the Sheriff's Department regarding the alleged loss of his money. The complaint names LMPD officers who allegedly removed his cash and signed the receipt. In a letter of June 21, 2005, William Kemery, a lieutenant with the Sheriff's Department, advised Chaidez as follows: "It appears your complaint is in regard to the events surrounding your arrest on April 2, [2004], by [LMPD] and the loss of your personal property. [¶] If I understand your allegations correctly, you are claiming someone from LMPD used a fictitious name when they signed your property slip. It also appears you have addressed this issue with Judge Lasater in the Superior Court. [¶] Since the court best evaluates the facts surrounding this incident, it would be improper for my unit to evaluate evidence under the court's jurisdiction. The Sheriff's Internal Affairs Unit investigates allegations of inappropriate conduct of our employees. We do not have the power or ability to change the outcome of a criminal case or influence the courts. [¶] The Sheriff's Department does not have the authority to conduct [an] internal investigation of another agency, in this case LMPD. If you feel their officers were inappropriate in their actions, you need to contact the [LMPD] about this issue." In a July 8, 2005 letter, the Sheriff's Department again notified Chaidez it had no authority to conduct an investigation into the

conduct of the LMPD, and to resolve his issue he must contact the LMPD. Chaidez, however, presented no claim to the City or the LMPD.

In January and February 2005 Chaidez had apparently written complaint letters to the LMPD. The letters, however, are not included in the record. In a June 22, 2005 letter, the Chief of Police, Alan Lanning, notified him the LMPD initiated an internal investigation in response to his January letter, and Chaidez's former attorney advised the LMPD that Chaidez was representing himself. The letter invited Chaidez to contact the investigating officer, Sergeant Fenn. In a May 9, 2006 letter, Lanning advised Chaidez that the LMPD had thoroughly investigated the allegations in his February 2005 complaint letter and found them unfounded. In a June 29 letter, Lanning notified Chaidez that the LMPD could not honor his request that the officers involved be subjected to lie detector tests.

On October 2, 2006, Chaidez presented a claim to the City pertaining to the allegedly missing money. It was accompanied by a 30-page handwritten document that is largely unintelligible, but accused police officers of perjury, forgery, fraud, theft, conspiracy and racial bias, and of planting evidence on him in the underlying criminal matter. On October 18, the City rejected the claim as untimely. The City notified Chaidez that his only recourse was to seek leave to present a late claim. He never sought leave.

On January 8, 2007, Chaidez, in propria persona, filed a 27-page handwritten and largely unintelligible complaint in the San Diego County Superior Court against the City and several LMPD officers. Defendants demurred on the grounds the complaint "lacks

sufficient particularity so that it fails to state facts sufficient to constitute a cause of action," and alternatively, Chaidez did not comply with the claim presentation requirement of the Government Claims Act. With a request for judicial notice, defendants submitted a declaration showing he did not present a claim to the City until October 2, 2006.

The court issued an order to show cause as to why the complaint should not be dismissed, and scheduled a hearing for November 2, 2007. Chaidez sought an emergency stay on the ground all his legal papers had been stolen and he was being "kidnapped to an unknown prison." The court gave him additional time to respond to the demurrer.

On February 15, 2008, the court sustained the demurrer with leave to amend "to plead separate specific causes of action," and "to number and label each cause of action and identify which defendant the cause of action is asserted." Further, the court allowed him leave to amend to plead an excuse for his failure to comply with the Government Claims Act.

In April 2008 Chaidez filed a 51-page handwritten first amended complaint (FAC), which is again largely unintelligible. The FAC was accompanied by 60 pages of exhibits, which consisted of the claims and complaints he had filed with the County, the Sheriff's Department and the City, which establish that he did not present a timely claim to the City. The FAC alleged that "racist whites" had stolen his money, rights, time, life, liberties and freedom, and his 2006 claim to the City was timely.

The City again demurred, and in his opposition papers Chaidez wrote, "[t]he moneys been located. Found. [¶] After which plaintiff clearly stated the money was no

longer lost or vanished. Plaintiff found that moneys, so no need for claim. The money was found on another officers report. Missing 3400\$ (etc.) plus dollars, found April 27, 2005, — May 12, 2005."⁵

The court sustained the demurrer without leave to amend, finding Chaidez's claim to the City was untimely under the Government Claims Act, and he has not and cannot adequately allege an excuse for his untimeliness, and additionally, the LMPD officers are statutorily immune from liability. Chaidez moved for a new hearing. The court denied the motion, finding he "failed to supply the court with new law or evidence that would support a motion for reconsideration."

DISCUSSION

I

Standard of Review

A demurrer "tests the legal sufficiency of factual allegations in a complaint." (*Rakestraw v. California Physicians' Service* (2000) 81 Cal.App.4th 39, 42.) "A demurrer can be used only to challenge defects that appear on the face of the pleading under attack; or from matters outside the pleading that are *judicially noticeable*. [Citations.] [¶] No other extrinsic evidence can be considered." (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2009), ¶ 7:8, p. 7(I)-7; *Ion Equipment Corp. v. Nelson* (1980) 110 Cal.App.3d 868, 881.)

⁵ Chaidez now admits his money was not lost or stolen, and the issue is whether the LMPD has wrongfully withheld it from him.

In reviewing the propriety of the sustaining of a demurrer, the "court gives the complaint a reasonable interpretation, and treats the demurrer as admitting all material facts properly pleaded. [Citations.] . . . The judgment must be affirmed 'if any one of the several grounds of demurrer is well taken. [Citations.]' [Citation.] However, it is error for a trial court to sustain a demurrer when the plaintiff has stated a cause of action under any possible legal theory. [Citation.] And it is an abuse of discretion to sustain a demurrer without leave to amend if the plaintiff shows there is a reasonable possibility any defect identified by the defendant can be cured by amendment." (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967.) "While the decision to sustain or overrule a demurrer is a legal ruling subject to de novo review on appeal, the granting of leave to amend involves an exercise of the trial court's discretion." (*Lazar v. Hertz Corp.* (1999) 69 Cal.App.4th 1494, 1501.)

II

Government Claims Act

A

Under the Government Claims Act (§ 810 et seq.)⁶, " 'no suit for "money damages" may be brought against a public entity until a written claim has been presented to the entity and the claim either has been acted upon or is deemed to have been rejected.

⁶ "Because of the broad scope of the claim requirements, a number of Courts of Appeal have followed the suggestion in *Baines Pickwick* that 'Government Claims Act' is a more appropriate short title than the traditional 'Tort Claims Act.' " (*City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 742, fn. 7, citing *Baines Pickwick Ltd. v. City of Los Angeles* (1999) 72 Cal.App.4th 298, 309-310.)

[Citations.]" [Citations.] Such a suit includes all actions where the plaintiff is seeking monetary relief. [Citation.] Accordingly, the claims presentation requirement applies to all forms of monetary demands, regardless of the theory of the action. [Citation.] . . . The failure to timely present a claim for money or damages to a public entity bars the plaintiff from bringing suit against that entity." (*Sparks v. Kern County Bd. of Supervisors* (2009) 173 Cal.App.4th 794, 798.) "The policy underlying the claims presentation requirements is to afford prompt notice to public entities. This permits early investigation and evaluation of the claim and informed fiscal planning in light of prospective liabilities." (*Ibid.*)

A claim against a public entity that arises from injury to person or property must be presented not later than six months after the accrual of the cause of action. (§ 911.2, subd. (a).) The "date of the accrual of a cause of action to which a claim relates is the date upon which the cause of action would be deemed to have accrued within the meaning of the statute of limitations which would be applicable thereto if there were no requirement that a claim be presented to and be acted upon by the public entity before an action could be commenced thereon." (§ 901.) "The act of the unlawful taking or disposal of the property is the wrong, and the statute starts running at the time of that act, regardless of the plaintiff's lack of knowledge." (3 Witkin, Cal. Procedure (5th ed. 2008) Actions § 623, p. 808; *Coy v. E.F. Hutton & Co.* (1941) 44 Cal.App.2d 386, 390 ["cause of action for conversion is complete at the time of the wrongful disposal of the property, and the statute starts to run from that time"].)

B

Defendants contend Chaidez's action accrued *no later* than June 21, 2005, when the Sheriff's Department notified him it had no authority to conduct an investigation into the conduct of the LMPD, and to resolve the issue he must contact the LMPD. It appears the claim accrued much earlier, but certainly it had accrued at least by then.⁷

Accordingly, Chaidez was required to present a claim to the City within six months of that date, and his October 2, 2006 claim was untimely. Further, Chaidez has not cited any allegations of the FAC that he sought relief from the six-month time limit based on, for instance, mistake, inadvertence, surprise or excusable neglect. In any event, it appears such relief was unavailable as a matter of law because the outside time limit for presenting a late claim for injury to person or property is one year from the accrual date. (*People ex rel. Dept. of Transportation v. Superior Court* (2003) 105 Cal.App.4th 39, 43; §§ 911.4, subd. (b), 946.6, subd. (c)(1).) We conclude the court properly sustained the demurrer without leave to amend on the ground of untimeliness.

Chaidez represents himself on appeal, and his briefing is disorganized and difficult to decipher. Most of it pertains to his underlying criminal trial and supposed evidence in that matter, which is immaterial to this appeal. (See Cal. Rules of Court, rule 8.204(a)(1)(C) [each point in briefing must be supported by citation to matter in the

⁷ The time limitation for presenting a claim under the Government Claims Act was not tolled by Chaidez's imprisonment. (Code Civ. Proc., § 352.1, subd. (b); *Moore v. Twomey* (2004) 120 Cal.App.4th 910, 914.)

appellate record].) A party who chooses to serve as his own attorney is not entitled to special treatment by the courts. (See, e.g., *People v. Maddox* (1967) 67 Cal.2d 647, 653.)

Chaidez appears to contend the claims and complaints he submitted to the Sheriff's Department and the County satisfied his obligation to present a claim to the City, since those documents referred to the LMPD. The contention lacks merit, as the County and the City are separate and distinct public agencies, and the presentation of a claim to the wrong agency does not satisfy the Government Claims Act. (*Jackson v. Board of Ed. of City of Los Angeles* (1967) 250 Cal.App.2d 856, 859; *Santee v. Santa Clara County Office of Education* (1990) 220 Cal.App.3d 702, 713 [doctrine of substantial compliance inapplicable when claim presented to wrong public agency].)

Additionally, Chaidez attempts to raise an estoppel argument. His opening brief states: " 'Continuous discussion' to settle 'problems' with the Chief of Police June 22 2005 'assurance' is given by these respondents the expressly acknowledge negotiations by the supreme authority implies a course of action to be taken therefore any conduct by the induced acts is excusable as never stopped, trying to resolve."

Chaidez is presumably referring to a June 22, 2005 letter to him from Chief of Police Lanning, which states the LMPD "began an internal investigation upon receiving your first complaint letter in January 2005." Chaidez's "complaint letter," however, is not in the record and there is no indication it satisfied the claim presentation requirements of the Government Claims Act. (See §§ 910, 910.2.) Further, estoppel principles are inapplicable because Manning's letter contains no affirmative representations on which Chaidez could reasonably rely. The letter merely states that Manning understood

Chaidez had begun representing himself, and he could call Sergeant Finn directly about the matter.

In *Tyus v. City of Los Angeles* (1977) 74 Cal.App.3d 667, the plaintiff alleged he suffered personal injuries at the hands of Los Angeles police officers during an arrest. He did not present a timely claim to the city, and argued that letters he sent to the board of police commissioners and mayor were claims for purposes of the Government Claims Act, and responses to the letters estopped the city from relying on time limitations for claims presentation. The court rejected the argument, explaining the city was "under no duty to advise appellant of the claims statutes or to consult an attorney." (*Tyus*, at p. 673.)

" 'Estoppel may be used in a proper case to excuse the late filing of claims against public entities or the filing of such claims in a defective form.' " (*Petersen v. City of Vallejo* (1968) 259 Cal.App.2d 757, 767.) " '[E]stoppel requires some affirmative representation or acts by the public agency or its representatives inducing reliance by the claimant.' " (*Ibid.*) The Manning letter does not support an estoppel claim, and Chaidez does not cite the FAC to show he even raised any theory of estoppel.⁸

⁸ Given our holding, we are not required to consider the immunity issue as an alternative ground for sustaining the demurrer.

DISPOSITION

The judgment is affirmed. Defendants are entitled to costs on appeal.

McCONNELL, P. J.

WE CONCUR:

HALLER, J.

O'ROURKE, J.